

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GED TESTING SERVICE LLC and AMERICAN COUNCIL
ON EDUCATION,

Plaintiffs,

v.

AMJAD PERVAIZ, ASIF SARWAR SAFI, and AZM
TECHNOLOGIES, individually and d/b/a Free GED Test,
Accredited Adult Diploma, Original High School Diploma, GED
Online Diploma, GED Test Center, High School Diploma Fast,
USA School Diploma, High School Program, Home Diploma,
Home Graduate, Online GED, FreeGEDTest.info,
AccreditedAdultDiploma.info, OriginalHighSchoolDiploma.info,
GEDOnlineDiploma.info, GEDTestCenter.info,
HighSchoolDiplomaFast.info, USASchoolDiploma.info,
HighSchoolProgram.info, HomeDiploma.info,
HomeGraduate.info, and OnlineGED.info; STEVE HAWKINZ
a/k/a STEVE HAWKINS, individually and d/b/a Online Diploma
GED and OnlineDiplomaGED.com; JOHN DOE 1 d/b/a “Robert,
Mr.,” Senford High School, Online GED, SHS Accredited High
School, Adult High School Diploma, S High School Diploma,
Earn Degrees Online, High Diploma School,
SenfordHighSchool.com, SenfordHighSchool.net,
SenfordHighSchool.us, OnlineGED.us, AccreditedHighSchool.us,
AdultHighSchoolDiploma.us, SHighSchoolDiploma.us,
EarnDegreesOnline.us, and HighDiplomaSchool.com; JOHN
DOE 2 d/b/a “Sara McCain,” GED Online, GED Online School,
and GEDOnlineSchool.com; JOHN DOE 3 d/b/a “John McCain,”
SHS, S High School Diploma, and SHighSchoolDiploma.com;
JOHN DOE 4 d/b/a “McCain Mr.,” Sunshine High School,
SunShine, Diploma-GED, Online GED, Get Your GED Online,
SunshineHighSchool.com, Diploma-GED.com, Get-Your-GED-
Online.com; JOHN DOE 5 d/b/a Higher Accreditation
Association for Online Schools and HigherAccreditation.org;
JOHN DOE 6 d/b/a Inventionist007; JOHN DOE 7 d/b/a Adult
Diploma and AdultDiploma.info; JOHN DOE 8 d/b/a Distance
High School and DistanceHighSchool.info; JOHN DOE 9 d/b/a
Earn Diploma Online and EarnDiplomaOnline.info; JOHN DOE
10 d/b/a Accredited Diplomas and AccreditedDiplomas.info;
JOHN DOE 11 d/b/a Earn GED Online and EarnGEDOnline.info;
and JOHN DOES 12-100 acting in concert with them,

Defendants.

12 Civ. 1157 (JPO)

**DECLARATION OF STEPHEN W. FEINGOLD IN SUPPORT OF PLAINTIFFS’
MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST ALL
DEFENDANTS**

I, Stephen W. Feingold, Esq., hereby declare as follows:

1. I am a partner at the law firm of Kilpatrick Townsend & Stockton LLP (“Kilpatrick Townsend”), 1114 Avenue of the Americas, New York, New York 10036, counsel for Plaintiff GED Testing Service LLC (“GEDTS”) in the above-captioned action.

2. I respectfully submit this declaration in support of Plaintiffs’ Motion for Entry of Default Judgment Against All Defendants dated July 17, 2012.

A. NATURE OF PLAINTIFFS’ CLAIMS

3. Plaintiffs brought the following claims against Defendants related to Defendants’ operation of a fraudulent “diploma mill” offering U.S. consumers¹ sham diplomas from fictitious high schools through a ring of at least 32 Fraudulent Websites² prominently featuring counterfeits of ACE’s federally registered GED[®] marks:

(i) trademark counterfeiting and trademark infringement under Section 32(1) of the Trademark Act of 1946 (the “Lanham Act”), 15 U.S.C. § 1114(1);

(ii) unfair competition and false designation of origin under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A);

¹ Defendants have offered to sell and have sold counterfeit services to consumers in the State of New York and this judicial district.

² These websites are AccreditedAdultDiploma.info, AccreditedDiplomas.info, AccreditedHighSchool.us, AdultDiploma.info, AdultHighSchoolDiploma.us, Diploma-GED.com, DistanceHighSchool.info, EarnDegreesOnline.us, EarnDiplomaOnline.info, EarnGEDOnline.info, FreeGEDTest.info, GEDOnlineDiploma.info, GEDOnlineSchool.com, GEDTestCenter.info, Get-Your-GED-Online.com, HighDiplomaSchool.com, HigherAccreditation.org, HighSchoolDiplomaFast.info, HighSchoolProgram.info, HomeDiploma.info, HomeGraduate.info, OnlineDiplomaGED.com, OnlineGED.info, OnlineGED.us, OrignalHighSchoolDiploma.info, SenfordHighSchool.com, SenfordHighSchool.net, SenfordHighSchool.us, SHighSchoolDiploma.com, SHighSchoolDiploma.us, SunshineHighSchool.com, and USASchoolDiploma.info (collectively, Defendants’ “Fraudulent Websites”).

(iii) false advertising under Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B);

(iv) cybersquatting under the federal Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d);

(v) deceptive trade practices under New York General Business Law § 349;

(vi) use of a name with intent to deceive under New York General Business Law § 133; and

(vii) trademark infringement and unfair competition under the common law of the State of New York.

B. RELEVANT PROCEDURAL HISTORY

4. Defendants were served with Plaintiffs' Complaint and all related papers (the "Complaint") (Docket No. 13) on March 15, 2012. *See* Certificate of Service (Docket No. 18). Pursuant to Fed. R. Civ. P. 12(a)(1)(A) and 6(d), Defendants' deadline to answer the Complaint was April 9, 2012. As of today, no Defendant has answered, nor has any Defendant requested an extension of time in which to answer.

5. Defendants were served with Plaintiffs' First Amended Complaint and all related papers (the "Amended Complaint") (Docket No. 17) on April 25, 2012. *See* Certificate of Service (Docket No. 19). Pursuant to Fed. R. Civ. P. 12(a)(1)(A) and 6(d), Defendants' deadline to answer the Amended Complaint was May 21, 2012. As of today, no Defendant has answered, nor has any Defendant requested an extension of time in which to answer.

6. In addition, on February 16, 2012, the Court entered a Temporary Restraining Order (the “TRO”), which was subsequently modified by the Court by issuance of new Orders on February 22, March 9, and March 14, 2012, against the Defendants. The TRO was served by electronic mail, as Ordered by the Court, on the Defendants along with the Complaint and other related papers, as reflected in the Certificate of Service noted above (Docket No. 18).

7. The Court ordered the Defendants to appear to show cause on March 23, 2012 why a Preliminary Injunction should not be entered pursuant to Section Fed. R. Civ. P. 65. No Defendant so appeared. As a result, on March 23, 2012, the Court entered an Order Granting Plaintiffs’ Motion for a Preliminary Injunction (the “Preliminary Injunction”) (Docket No. 12). The Preliminary Injunction, which largely continues the restrictions articulated in the TRO, remains in force pending the outcome of this matter.

8. On May 23, 2012, the Clerk of the Court issued a Certificate of Default of all Defendants. *See Exhibit A.*

9. On July 17, 2012, Plaintiffs’ Motion for Entry of Default Judgment, the May 23, 2012 Certificate of Default, and the Notice required by the Honorable J. Paul Oetken’s Individual Practice in Civil Cases, were served on Defendants by electronic mail, as Ordered by the Court, and as reflected in the Certificate of Service attached as Exhibit B.

C. THE THREE TYPES OF FRAUDULENT PRODUCTS AND SERVICES OFFERED BY DEFENDANTS

9. Defendants in this suit in fact offer three distinct products and services to the public.

10. As evidenced in Exhibit C, Defendants primary product is a fraudulent high school diploma that is obtained by “passing” a GED[®]-like test, except that this test is given online with no security to protect the integrity of the answers.

11. However, apparently there are some candidates who are intimidated by the prospect of taking a test, and so Defendants promote what is in essence an equivalency diploma. However, this equivalency degree is not based on establishing academic achievement but rather by providing a description of the experiences in one’s life that “qualify” one to obtain this credential. *See* Exhibit C.

12. As an investigator retained by Plaintiffs explained in his report, the experiences he submitted to justify obtaining a degree were that, between 2002 and 2004, he worked as a volunteer with a street clean up program, and that, since 2004, he has worked at McDonald’s. Copies of the “High School Diploma” and other referenced documents sent by Senford High School to Plaintiffs’ investigator are attached hereto as Exhibit D.

13. Finally, in addition to these two kinds of degrees, Defendants also purported to offer accreditation services that claim to have reviewed Senford and Sunshine High Schools and found them to qualified to provide high school diplomas. *See* Exhibit E.

D. VICTIMS OF DEFENDANTS’ FRAUDULENT ACTIVITIES

14. On March 17, 2012, pursuant to this Court’s Orders dated March 9 and 14, 2012, Plaintiffs arranged for all the domain names associated with Defendants’ Fraudulent Websites to point to a splash page hosted by my law firm. The splash page

advised persons seeking information about Senford and/or Sunshine High Schools to contact me.

15. Our firm's Information Technology department has tracked the number of visitors to Defendants' Fraudulent Websites since the legal splash page was first posted on March 17, 2012. Attached as Exhibit F is the latest report showing the number of hits each day, the number of unique visitors, and other information. Amazingly, these statistics show that these sites were attracting on average 1,000 visitors a day. Even after four months, these sites continue to attract on average more than 500 persons per day.

16. Between March 17, 2012 and today's date, I have received inquiries from 15 victims of Defendants' fraud, some of whom paid for a diploma, which they never received, and others of which received a diploma, only to learn that it was not accepted by prospective employers or educational institutions.

E. VERIFICATION REQUESTS

17. Between March 17 and today's date, I have also been contacted by representatives from Iona Community College in Westchester, New York, Santa Monica Community College in Santa Monica, California, Coastal Carolina Community College in Jacksonville, North Carolina, HireRight, Inc., and Verifications Inc. seeking to verify the educational credentials of individuals who purchased a diploma from Senford or Sunshine High Schools.

F. CONTACT WITH DEFENDANTS

18. On March 14, 2012, hours after Defendants' Fraudulent Websites were disabled and the legal splash page posted, as authorized by this Court, I received a phone

call from Defendant Steven Hawkinz, who represented that he controlled the Fraudulent Websites.

19. Between March 14 and March 20, 2012, I received a few emails from Mr. Hawkinz concerning the lawsuit and Defendants' Fraudulent Websites. Attached hereto as Exhibit G are true and correct copies of all communications between Defendant Steven Hawkinz and myself.

G. DOCUMENTS

20. Attached hereto as Exhibit H is a true and correct printout from Archive.org showing that Defendants' SenfordHighSchool.com website was active as early as August 28, 2008.

21. Attached hereto as Exhibit I is a true and correct printout of Defendants' Wikipedia.org page from February 13, 2012.

22. Attached hereto as Exhibit J is a true and correct printout of Defendants' Facebook.com page from February 13, 2012.

23. Attached hereto as Exhibit K is a true and correct printout of Defendants' YouTube.com page from February 13, 2012.

H DAMAGES

24. Plaintiffs papers include a request that Plaintiffs be awarded statutory damages from Defendants in the amount of \$6,000,000.

25. Plaintiffs have incurred and paid more than \$200,000 in legal fees since Plaintiffs began to investigate the Fraudulent Websites. While this case is clearly within the ambit of cases where courts routinely grant attorneys' fees under the Lanham Act, in order to avoid the cost and expense of documenting these fees (especially because the

award of fees here is largely symbolic because it is unlikely that Plaintiffs will collect any portion of the judgment), we request that the Court simply consider that Plaintiffs have incurred fees in excess of \$200,000 when setting the amount of statutory damages in this case.

26. No part of this judgment has been paid by Defendants.

Dated: July 17, 2012
New York, New York

A handwritten signature in blue ink, reading "Stephen Feingold". The signature is written in a cursive, flowing style.

Stephen W. Feingold